दवाइयां महंगी होती हैं और इसके बावजूद भी वह बरबाद हो जाएं तो किसान का कोई सहारा नहीं रहता है। इन शब्दों के साथ मैं आपका आभार मानता हूं और केन्द्रीय कृषि मंत्रालय का ध्यान कपास के किसानों की तरफ आकर्षित करता हूं।

I. THE CUSTOMS AND EXCISE REVENUES APPELLATE TRIBUNAL BILL, 1986.

II. THE CUSTOMS TARIFF (AMENDMENT) BILL, 1986.

III. THE CENTRAL EXCISE TARIFF (AMENDMENT) BILL, 1986.

THE DEPUTY CHAIRMAN: Now, we shall take up the Customs and Excise Revenues Appellate Tribunal Bill. Shri...

SHRI NIRMAL CHATTERJEE (West Bengal): Madam, when is the statement by the Home Minister coming, regarding the Karnataka incident?

THE DEPUTY CHAIRMAN: I do not have any information about that.

SHRI K. MOHANAN (Kerala): In the morning they had intimated to the House that the Home Minister will make a statement regarding the incidents in Karnataka.

SHRI NIRMAL CHATTERJEE: Let the Parliamentary Affairs Minister enquire.

SHRI ATAL BIHARI VAJPAYEE: (Madhya Pradesh): We wanted to refer to the Karnataka incidents by way of a Special Mention. But when the hon. Chairman suggested that Special Mention will not be necessary because the hon. Home Minister will be making a factual statement of events in Karnataka, we have not made a Special Mention. Why is the statement not coming?

THE DEPUTY CHAIRMAN: Let us wait. There is still time. We will find out. (*Interruptions*) Now, we shall take up the Bill.

SHRI RAMESHWAR THAKUR (Bihar): Madam, I suggest that all the three Bills, the Customs and Excise Revenues Appellate Tribunal Bill, the Customs Tariff (Amendment) Bill and the Central Excise Tariff (Amendment) Bill, 1986, may be taken up together.

SHRI NIRMAL CHATTERJEE: We have no objection. Let us consume much less time and finish them.

THE DEPUTY CHAIRMAN: It doesn't matter. I think we can do that. Shri Poojari.

THE MINISTER OF STATE IN THE MINISTRY OF FINANCE (SHRI JANARDHAN POOJARI): Sir, I beg to move:

> "That the Bill to provide for the adjudication, by an appellate tribunal, of disputes with respect to the determination of the rates of duties of Customs and Centra Excise on goods and to the valuation of goods for the purposes of assessment of such duties, in pursuance of article 323 B of the Constitution and for matters connected therewith or incidental thereto, as passed by the Lok Sabha, be taken into consideration."

As hon. Members are aware, customs and Central excise duties contribute about 80 per cent of the total tax revenues of the Central Government. Both these duties have, thus, a vital role in augmenting the financial resources of the Centre. However, in recent years there has been an enormous increase in litigation relating to disputes with respect to the valuation of goods and/or the determination of the rate of customs and Central excise duties for the purpose of assessment of such duties. As a result, the collection of very large amounts of revenue has been blocked.

[Shri Janardhan Poojari]

In order to mitigate the serious problems of litigation, it is proposed to set up a Tribunal under article 323 B of the Constitution to deal with appeals arising from disputes relating to valuation of goods and the determination of the rates of duties in the assessment of customs and Central excise duties. With the establishment of this Tribunal, the jurisdiction of all courts, except the Supreme Court, would be barred in matters relating to valuation and the determination of the rate of duties in the assessment of customs and Central excise duties. To start with, the Appellate Tribunal would be headed by a retired or serving Chief Justice or a Judge of a High Court.

At present, appeals from the orders of Collectors are submitted to the Customs, Excise and Gold (Control) Appellate Tribunal. It is now proposed that as far as disputes relating to valuation and the determination of the rate of duties are concerned, the appeals from the level of Collectors will lie to the new Tribunal. Simultaneously, the present jurisdiction of the existing Appellate Tribunal in regard to these matters would be taken away.

It is proposed that new Tribunal will receive cases only in respect of disputes regarding rates of duty arising out of the Customs and Excise Tariff Schedules which were brought into force on 28-2-1986 and in respect of valuation disputes which arose on or after the same date. So far as the pending cases or new cases that may have arisen out of the old tariff schedules are concerned, the existing jurisdiction of the Customs, Excise and Gold (Control) Appellate Tribunal and of the High Courts would continue.

It is expected that the establishment of this Appellate Tribunal will reduce litigation and will also impart greater certainty in the administration of the Customs and Central Excise duties.

Madam, I move that the Bill, as passed by the Lok Sabha, may be taken up for consideration.

Madam, I beg to move:

"That the Bill further to amend the Customs Tariff Act, 1975 as passed by the Lok Sabha, be taken into consideration."

Hon. Members of Parliament would recall that the First Schedule to the Customs Tariff Act, 1975 was substituted by a new Schedule based on the International Convention on the Harmonised Commodity Description and Coding System to bring about an internationally accepted system of Nomenclature (Harmonised System) through the Customs Tariff (Amendment) Act, 1985 which came into force on 28-2-1986. The Harmonised System provides a simple, precise and objective classification system.

Subsequent to the adoption of the aforementioned Convention, the Interim Harmonised System Committee in Brussels had finalised certain editorial amendments to the Harmonised System mainly in the nature of verbal corrections. These amendments do not bring about any material change in the scope of legal headings in the Nomenclature. The changes are proposed to be incorporated in the First Schedule to the Customs Tariff Act through the proposed Bill.

The Bill also contains, as a measure of protection to domestic industry, proposals to raise the tariff rates of basic customs duties in respect of caustic soda in solid form to 200 per cent plus Rs. 1500 per tonne and on certain types of narrow woven fabrics to 300 per cent, *ad valorem*. The effective rates of duties would be fixed through exemption notifications. These problems are not revenue raising proposals, but seek to protect the domestic industry.

Madam, I move that this Bill as passed by the Lok Sabha may be taken up for consideration.

Madam, I beg to move:

"That the Bill further to amend the Central Excise Tariff Act, 1985, as passed by the Lok Sabha, be taken into consideration."

Central Excise Duties are levied at the rates specified in the Schedule to the Central Excise Tariff Act, 1985. The Tariff is based broadly on the system of classification derived from the International Convention on the Harmonised Commodity Description and Coding System (Harmonised System) with such contractions or modifications as were considered necessary. The First Schedule to the Custom Tariff Act, 1975, which is also based on the Harmonised System is basically a six-digit code system consisting of headings at four-digit level further divided into sub-headings at fifth and sixth-digit levels. It was considered desirable to gradually align excise tariff with the customs tariff only to reduce classification disputes but also facilitate compilation of statistics. With this object, amendments are proposed in Chapter 28 to 40 of the Schedule to the said Central Excise Tariff Act to bring about closer alignment of the excise tariff and customs tariff at the four-digit level with certain exceptions. The proposed amendments would be brought into effect from a later date administratively convenient to allow sufficient time both for the trade and the departmental officers to get acquainted with the revised nomenclature and also to facilitate the issue of consequential exemption notifications so that the amendments and the notifications could be brought into effect simultaneously.

The Bill, Madam, also proposes to fix a tariff rate of duty of Rs. 9 per kg. or 50 per cent *ad valorem*, whichever is less, in respect of polypropylene wastes so that such wastes are also made chargeable to excise duty like other fibre wastes like polyester, nylon, etc. Effective rates would be fixed through exemption notifications.

Madam, I move that this Bill also as passed by Lok Sabha be taken into consideration.

The questions were proposed

SHRI NIRMAL CHATTERJEE: Madam, now the three Bills are taken up together. (*Interruptions*) First of all, let me mention about the two minor Bills and then come to the third one which, to my mind, is more important, and that is the Appellate Tribunal Bill. Mr. Poojari has a style of his own. In the Statement of Objects and Reasons, there is a provision, though a minor one, which is stated in this manner: "Opportunity is being availed of to raise the tariff rates of customs duty in respect of caustic soda in solid form and on Narrow Elastic Tapes to protect the domestic industry."

THE DEPUTY CHAIRMAN: Just a second. I have to make an announcement. The Home Minister will make a statement at about 4.30 P.M.

SHRI NIRMAL CHATTERJEE: So, I have to continue till 4.30 P.M. And in the other Bill, it is stated that "opportunity has been availed of to increase the tariff rate of duty in respect of polypropylene wastes." I thought that the Minister would be kind enough to explain why these are necessary because soda ash is an output in the MRTP sector and lots have been said on this, but I would not dilate on this. Apart from this, in these two Bills what is there is usually known as harmonised system of classification which is reclassification. There are plenty of problems on this classification. Being a participant in the Public Accounts Committee, I know every year the Auditor-General makes a report on misclassification. There are several chapters

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in their reports on this. Now, this is an attempt to do away with these problems. But even then, I wonder that while the harmonised system has a six-digit classification why you are adopting the four-digit one. On the other hand we all say that our economy is diversified which means that more and more items are coming into it. Therefore, I suggest that instead of narrowing it down to four-digit classification, the classification should be broadened into a six-digit one so that there is no scope of misclassification in the future. With these words, Madam, I enter into this more important Bill.

Madam, my initial reaction was that the Bill is an unnecessary one. I felt so because the players on the two sides of the chess-board, there as a chess-board, two friendly players so long were playing between them, they were so friendly that each was trying to see that the other wins. And, therefore, that match was continuing, that is how the game of chess was continuing for ever and the private sector was trying to see that the Government stays in power and the Government was trying to see that the private sector continues as flourishingly as in the past. But now Madam, I felt that the chess-board itself has been folded up so that there are no players. I feel in this manner because the question of industrial tribunal has come as a way of getting rid of the diverse judgments of different High Courts and centralising them in a tribunal. There was litigation. Now I felt that with lowering of rates of taxation with perennial amnesty provided for, litigations will no longer take place. It has been said repeatedly, we have been repeatedly reminded by the Finance Minister that now the atmosphere has so cleaned up that people are coming forward voluntarily to pay their taxes and so the question of litigation does not arise. Therefore, if the question of litigation does not arise, where is the need for a special tribunal affecting some judges in different High Courts who have specialised in tax laws. Therefore, I felt that ultimately perhaps at the introduction stage the Ministry will come forward and say, we are withdrawing the Bill but that is not to be and for valid reasons. I am not referring to the fact as has come out in recent newspapers that all the big houses of the country have played with tax payments. The amount is still secret for understandable reasons because of their close liaison with the Government. The Birlas, the Tatas and all the big houses you name, they are manipulating taxes, that is the present report.

Madam, the fact why this Bill was not withdrawn is evident from the drafting of the Bill itself. Let me try to see what the Bill contains. How innocuous the Bill can be made and how it will remain something on the statute book without being rigorously implemented, without any possibility of rigorous implementation. I refer to clause 6(b). It is said: The composition of this tribunal will be a chairman, who shall be nominated by the Chief Justice of India, and such other members as may be nominated by the Government. No reference to Chief Justice. The two friendly players merge here. Why is it not possible with these other members also in the tribunal who should be appointed in consultation with the Chief Justice? Or alternatively, since the different Chief Justices of different High Courts were giving varying judgments and these cases are concentrated in certain metropolitan High Courts of the country, appoint the other members on the basis of consultation of Chief Justices of such Courts. No, that cannot be. Because that is a third party, non-playing party. As a token I mentioned that the President be appointed in consultation with the Chief Justice. For the rest one party of the friendly match retains the power. Now, look at clause 7, part

(2), how the provisions are modified. It says: "When the President is unable to discharge his functions owing to absence, illness or any other cause, such one of the members as the Central Government may, by notification, authorise in this behalf, shall discharge functions of the President until the date on which the President resumes his duties." We know of diplomatic illnesses; we know of leave applications under pressure. Why not leave this also to the Chief Justice? I want the tribunal to be as far away as possible from the contending parties and, therefore, I suggest that even if there is illness or absence of the President for any other reason, who shall act as officiating President, should be decided in consultation with the Chief Justice of India.

Then, Madam, there is clause 11. This is a beautiful clause. It restricts a member of the tribunal. What does it say? It says: "On ceasing to hold office, the President shall be ineligible for further employment either under the Government of India or under the Government of a State". And part (b) says: "A member, other than the President, shall, subject to other provisions of the Act, be eligible for appointment as the President but not for any employment under either the Government of India or under the Government of a State." Now, is it a question of a dispute between the State Government and the Government of India, or is there private sector also involved? It it is possible, through the tribunal, to please the private sector, and not the Government, and in that manner get employment after retirement in such private sector organisation, how will you prevent corruption? This shows that while introducing this Bill, or while drafting this Bill, care has been taken to see that members of the tribunal can be influenced by the private sector, one of the contending parties. I therefore, suggest that the hon. Minister of State for Finance should consider this inconsistency with the kind of honesty that they are trying to nurture. Would it not behove them to impose restriction on any employment, even in the private sector?

Then, let me make a reference to clause 13(1). See the kind of importance paid to the tribunal which is supposed to act impartially and to satisfy the private sector also, and to see perhaps the revenue implications from the point of view of the Government. It says: "The Central Government shall determine the nature and categories of the officers and other employees required to assist the appelate tribunal in the discharge of its functions and provided the appellate tribunal with such officers and other employees as it may think fit". May I remind the House of the problems that were faced by the MRTP Commissions. If you control the staff in terms of its number and identity, the Government can, at its will, see that either the tribunal functions on its own terms which may be the terms of the private sector, or let the tribunal not function at all, by withdrawing the staff. It is not true in the case of courts, where appointments are not determined by the Government. Why not have the same kind of attitude here? Why not have the same kind of attitude as we have towards the courts? Perhaps, because, courts were established in terms of the Constitution during the heyday of our period of liberal moods.

Then, let us have a look at clause 14. If I am wrong, I would request then hon. Minister of State to kindly correct me. The reference is in clause 13(1). It is in Chapter III which says: 'Jurisdiction, powers and authority of the Appellate Tribunal'; the authority in terms of levy and collection of any duty of excise in relation to any goods on or after the 28th day of February. Now, Madam, I would like to know whether this inclusdes penalties. We have been saying that henceforward, penalties would be such that there would not be any mishandling either by the income-tax

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people or the excise or customs people. As you know, it is not so. There is flexibility. There is discretion in imposing the amount of penalty. We know the Government uses the discretion when it says in regard to its amnesty schemes that penalties need not be paid. Neither imprisonment, nor penalty. Only tax is enough for the Government. Here, I would like to know, firstly, does the jurisdiction exclude imposition of penalties. Secondly, does it exclude several things like what are known as post manufacturing expenses? Up to which level are you giving power to the Tribunal to decide? If you want that standardised judgements should come from the Tribunal in place of the different High Courts, why are you restricting this? If I am wrong, I would like the hon. Minister to correct me by saying 'No; all these issues, including penalties, would come under the jurisdiction of the Tribunal'.

Madam, I would like to refer to one other clause. Even in this clause, there is an interesting item. That is, this Tribunal is explicitly forbidden to take into account the drawbacks that are paid by the Government. In this House, I had occasion to refer to this. I believe, sometimes, Mr. Jagesh Desai might have joined me or I might have joined him. When you talk about subsidies, in terms of foodgrains and fertilisers, you try to suppress the fact of subsidies through drawbacks, cash compensatory support and such other things. Why exclude it from the purview of the Tribunal? Why not say that the Tribunal will evaluate whether this was the relevant amount of drawback that was necessary in order to export? Or, is it that the officials as representatives of the invisible hand will go on pumping money into the private sector in this manner? I would like to be clear on this. The question is, who can go to the Tribunal? I am not quite clear. Is it the aggrieved party, either the taxpayer or the Government or is it that a third person can go to the Tribunal questioning the amount of the CCS or the drawback? Why don't you allow the democratic right to the third party as well? The Tribunal is, after all, a judicial body. Let it judge whether my complaint is valid or not. Have I read too much into the relationship that obtains between the private sector and the Government. Finally, I would refer to one more thing. Clause 20 of the Bill says:

> "Where in any appeal under this Act, the decision or order appealed against relates to any duty demanded in respect of goods which are not under the control of the central excise authorities or the customs authorities, as the case may be, or any penalty levied under the Central Excises Act or the Customs Act the person desirous of appealing against such decision or order shall, pending the appeal, deposit with the proper officer the duty demanded or the penalty levied."

This is excellent. There seems to be an attack on the private sector, yes, but read the proviso, which says: says:

> "Provided that where in any particular case, the Appellate Tribunal is of opinion that the deposit of duty demanded or panalty levied would cause undue hardships to such person the Appellate Tribunal may dispense with such deposit subject to such conditions as it may deem."

Madam, I submit that doubts have been expressed in this regard and may I request that it be provided that in all such cases of suspicions, in all cases of doubts, let the reasons be explicity stated so that the people of the country can judge the kind of quality we have got into the Administrative Tribunal?

SHRI RAMESHWAR THAKUR: Madam Deputy Chairman, I rise to support the Customs and Excise Re-

venues Appellate Tribunal Bill, 1986, as well as the other two Bills relating to Central Customs Tariff and Central Excise Tariff.

Coming to the first Bill, I would like to start with my esteemed friend, Professor Nirmal Chatterjee, who questioned about the necessity of having this Bill at all. In this connection, I would like to mention in brief that the genesis of this Bill, which is a very important Bill, arises out of the commitment made by the hon. Finance Minister as a part of the long-term fiscal policy. Indirect tax is one of the important aspects of revenue. Rather, we derive three-fourths of the revenue from indirect tax and we are all aware that in the past there have been a number of litigations pending in the court in regard to indirect taxes. Therefore, to expedite the process of these litigations, it was decided that there should be a separate tribunal which should deal with these matters. I would like to refer to clause 6.21 of the long term Fiscal Policy which reads:

> "In recent years there has been an enormous increase in litigation relating to excise cases. Collection of thousands of crores of rupees of excise have been held up because of litigation. Many of these cases relate to disputes over classification and valuation of goods for purposes of excise. A large number is also due to certain provisions in the Central Excise and Salt Act, 1944, which lead to retrospective application of decision regarding valuation and application of duty."

This gives the justification for bringing forward this Bill.

It is further said in clause 6.22: "In order to curb these problems the Government proposes to establish an Appellate Tribunal under article 323B of the Constitution to deal with all matters connected wih payment of excise and customs duty". And then it further says: "The procedure of the Tribunal will be designated to ensure speedy settlement of all assessment disputes. Further more, it proposes to amend excise laws to lessen scope of retrospective changes in rates of duties and valuation of goods." These steps should reduce litigation and will also impart greater certainty in the administration of indirect taxes. Hon. Member, Shri Nirmal Chatterjee, is one of those eminent Members of the House who hold this long-term fiscal policy as one of the cherished goals of fiscal law in this country. Therefore the Bill which we have before us is in pursuance of the fulfilment of the commitment made by the hon. Finance Minister in the long-term fiscal policy as well as in the Budget.

So far as its provisions are concerned, I have a few suggestions to make and I shall deal also with some of the aspects touched upon by Prof. Chatterjee. One is in regard to the composition of the Tribunal and the Benches thereof. The qualifications for appointment as President and the composition have been dealt with in clause 4. It says:

> "The Appellate Tribunal shall consist of a President and such number of Judicial and Technical Members as the Central Government may deem fit,..."

Now, in this case a question has been raised legitimately, because in clause 5, we find:

> "As person shall not be qualified for appointment as the President unless he—
>
> (a) is, or has been, a Judge of a High Court;" and therefore the question comes that if he is a Judge of the High Court and if he is appointed as the President, his tenure subsequently in the next clause is only for three years. Now if he is appointed for three years and if he is a Judge of a High Court. what would be his fate on retirement after three years?

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There is another clause which Prof. Chatterjee also mentioned and which I would like to mention later on, which says that a person who retires from the Tribunal cannot be appointed or cannot have any assignment under the Central Government or the State Government. So it would mean that no Judge of the High Court would like to come to this Tribunal. Only retired persons could be taken. I would like a clear clarification from the hon. Minister as to what the intention of the Government is in this regard, otherwise we have a feeling that the Tribunal will not serve the purpose and we will not be able to attract good type of persons.

SHRI ATAL BIHARI VAJPAYEE: They do not want the Judges.

SHRI RAMESHWAR THAKUR: Retired Judges only. You are right. There is another clause which says "has, for at least two years held the office of a Judicial Member or a Technical Member".. I have another suggestion to make: in the case of a Judicial Member, he can be a Judge or a retired Judge or a person qualified to be a Judge of a High Court—*i.e.* who has got at least ten years practice at his command—or he can be a member of the Indian Legal Service of Gr. I. This is reasonable. But I would like to know in regard to the Technical Member—because the Technical Member can be one who has been a member of the Indian Customs and Central Excise Service, Group 'A' for a period of at least thirty years—that if he has spent 30 years of service, then he can be only at the verge of retirement. Only he would be suitable to come to this job. For other members, it is said that they should at least be persons having the rank of Collector of Customs or Central Excise and have got at least 10 years' service in that rank. I would like to know what the idea is, because we must be very clear on this issue. We are trying to replace the High Court by this Tribunal. Therefore the Judges or Members of the Tribunal, in whom the public should have confidence and Government should have confidence, should be such competent persons as should really do justice in place of the High Court. Therefore it is essential that the status of such persons must be such that they are either persons who are of the rank of a High Court Judge or an equivalent to that. In the case of selection of Technical Members also, it seems that the idea is that they should be only retired members from the Indian Customs and Central Excise Services. If the words are not "officials from the Department" and if it really means Technical Members, then I do not know why otherwise competent persons should not be taken into consideration. ... (*Interruption*) ... My point is, in the case of a Judge we have a lawyer of ten years' standing. Can't we have it like that? Take, for instance, a Chartered Accountant. If he has the necessary other experience of an equivalent nature of ten years and so on, why they also should not be considered for this? This is a matter which requires consideration. Otherwise, there may be apprehensions that we will have two kinds of persons, only of a retired nature or persons who are on the verge of retirement, and they will be there for some years... (*Interruptions*)

Then, clause 8 says that the term of office is for three years. It does not say whether they could be re-employed or not, whether this term could be extended or it is up to 65 years of age, whether, if he attains 65 years of age he retires or he has a tenure of three years. That is why earlier I was mentioning that a Judge of the High Court may not like to come here in spite of the fact that the remuneration and other conditions may be all right because, what will he do after three years? And there is nothing mentioned here whether it is re-appointment or whether

the service can be extended further up to the age of 65 years. That is not there. The second point is, it also says "a term of three years from the date on which he enters upon his office or until he attains the age of 65." Now the question is whether it means a person who has only one year's service left can also join as President or Member, because it may create a problem. Recently we passed a Bill in the case of the Industrial Finance Corporation of India and other Government concerns and the idea is that a person must be there at least for a period of three years. I say, a minimum of two years is essential. Otherwise a person who is on the verge of retirement may join the Board and continue till the age of 65 as it happens, particularly in the case of Income Tax Settlement Commissions.

In regard to salaries and allowances it is said that they will be decided by the Government as per the terms and conditions of service. I would say, if you really mean to get senior people from the judiciary and other places, the service conditions should be slightly better than the other tribunals that we have in the country today because the status must always be comparable with High Court Judges and not with ordinary members of other tribunals.

The other aspect is, the President shall not be eligible for further employment either in the State Government or the Central Government. As I mentioned earlier, this clause should be at least modified to say "any other service." It is rightly pointed out by Prof. Chatterjee that he should not join any Government job at State or Centre. At the same time, he should not be entitled to join any private job also. This is essential.

As regards the staff of the Appellate Tribunal, I think Prof. Chatterjee is right here. I have another suggestion to make. The question is, we may not have all the staff recruited separately, but those staff who come on deputation from the Government must be fully absorbed in the Tribunal service. If they come here only for a period of two or three years on deputation, that creates a problem in the working of many of the tribunals because some of them get promotion in their own parent department and they go back and others either retire or not capable otherwise. So, all the time they look to their parent department and so there cannot be continuity and effective functioning. Also, to some extent the independence of the working of the Tribunal itself may be slightly affected because a person always seeks guidance from his parent department. Initially the Government may depute those persons.

4 P.M. In the case of persons who go to the public sector undertakings, they are asked either to opt to remain with the public sector undertakings themselves or to go back to the parent department. Similarly, there should be a provision in this case also. Also, the Tribunal should be competent to recruit its own staff if they do not get sufficient staff. If they need some qualified, bright and experienced people, they should be entitled to recruit their own staff.

The next one is in regard to jurisdiction under section 14. We find here that certain class of cases relating to the rate of duty of excise and the value of goods, these two classes of cases are to be referred to this Tribunal. Other cases will not be referred. The cases are only those which have come after 28th February, 1986. Now my suggestion is, if it is a Tribunal of a permanent nature, as the policy statement has said, all cases of excise and customs should be referred to this. The intention is not that some cases in relation to the rate of duty and also the value of goods will come to this Tribunal and

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that other matters will remain with the then existing Tribunals. Otherwise, it means that there will be parallel Tribunals functioning. This is a question for consideration, whether that was the intention because, as we know, in the cases of an earlier Act, the Central Board of Revenue Act, 1963 there was a provision when the Central Board of Direct Taxes was formed that all the cases with the Central Board of Revenue should be transferred. Section 6 says that every proceeding pending at the commencement of this Act before the Central Board of Revenue shall, if it is a proceeding relating to direct taxes, stand transferred to the Central Board of Direct Taxes, and if it is a case relating to other cases, it shall stand transferred to the Central Board of Excise and Customs. My point is, if a Tribunal is there for a particular purpose, at least for those purposes all cases should stand transferred whether they are cases of a particular date or not. If earlier cases are there and they are before the High Court, then, why should those cases not be transferred to the Tribunal? There may be a difference of opinion and judgement on the same matter. Maybe, prior to that date, the same matter may be before the High Court, and cases coming after that date will be before the Tribunal. The question is whether the decision of the two institutions will prevail. It may create more confusion. At least in regard to these items for which the Tribunal has been now constituted or is being constituted, all cases should be transferred or stand transferred on the appointed date to this Tribunal. They should not remain with parallel authorities.

Secondly, the hon. Minister may also consider whether it is proper that all cases relating to Central excise and customs should not be entrusted to this Tribunal and should not be partly left with the existing Tribunals and with the High Court. This should be the central, focal point from where only all the cases should be referred to the Supreme Court.

Then, Sir, there is only one more matter which I would like to state in regard to the procedure to be followed. About appeals to the Appellate Tribunal, we are now giving a date for filing an appeal within three months under section 18, and then for filing within 45 days of the receipt of the notice a memorandum of cross-objections. So, these three months and one-and-a-half months, totally four-and-a-half months have gone only in filing. Thereafter, the other part is silent on by what time the cases will be disposed of. My suggestion is this. Since the very basic idea was to expedite the cases and litigations so that it should not take a long time, is it not possible that at least the date for filing should be minimised to 60 days and not 90 days? Similarly for filing the cross-objections within thirty days, that should be a reasonable time limit, because these two taken together will be 90 days. Since clause 3 already permits that "the Appellate Tribunal may admit an appeal or permit the filing of a memorandum of cross-objections after the expiry of the relevant period referred to in sub-section (1) or sub-section (2), if it is satisfied there was sufficient cause for not presenting it within that period," I have two suggestions to make. Since this clause is there it means the time limit should be sixty days and thirty days. Secondly, there should be no limit up to which the Tribunals can admit the cases. Of course, they should have a right in certain cases, but there must be a time limit. Otherwise they should not have a right. It somebody comes after one or two years and still they have an over-riding rights to admit such cases, it should not be allowed. There may be a reasonable ground, but an application must be filed within a reasonable period. I would say further two months' time or three months' time should be

the maximum period within which the tribunals should be entitled to accept such appeals. May be they may give extra one month's time for acceptance of cross objections. I think it will be necessary, if it is not possible to incorporate here, to incorporate it in the rules so that there is no undue delay. Otherwise the purpose of having a separate Tribunal will not be met.

There must also be a time limit for the Tribunal to decide all cases. There is no such clause appearing in the entire Bill. We have seen in the beginning in the settlement courts all cases used to be disposed of very speedily, but on various occasions we found that there are many cases which are there for years together. So, in these tribunals unless there is a time limit fixed for the disposal of the cases either way, this unlimited time limit will not fulfil the very objective for having a separate Tribunal in place of the High Court. We are trying to have this because courts take a long time. The idea was that speedy decision should come forward. When there is a limit fixed, then only it is feasible.

Now I come to Section 19. It is in regard to the procedure and powers of the Appellate Tribunal. Here Clause 1 says:

> "The Appellate Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908,"

but the next clause says:

> "The Appellate Tribunal shall have for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908."

I think this drafting is not proper. They should have said in the first Clause:

> "It will not be bound by procedures laid down in the Code of Civil Procedure, 1908, subject to Clause 2.

Otherwise in clause 1 at one place you say 'it will not be applicable and in Clause 2, you say it will be applicable'. So, this is a little inconsistency.

Secondly, it also says that the Code of Civil Procedure, 1908 will not be applicable "but shall be guided by the principles of natural justice and subject to other provisions of this Act and of any rules made by the Central Government." Since we are taking away the provisions of the Code of Civil Procedures just to expedite things, this right of the principles of natural justice and also the rules or the procedure that may evolve for itself, I would very much urge that this is a new experiment we are having and a very substantial amount is involved, therefore, if we forego the procedure laid down in the Code of Civil Procedure, 1908, it is necessary that the Central Government should frame detailed rules to ensure that a speedy, but proper procedures are laid down in regard to hearing these cases. Otherwise there may be difficulty and different decisions may take place. There will be different benches here also and may be some times some such decisions which are not intended will be taken and might create procedures which may be against the principles of natural justice.

Section 21 says: "A person preferring an appeal to the Appellate Tribunal under this Act may either appear in person or take the assistance of a legal practitioner of his choice ...".

In this case we have got an Income Tax Appellate Tribunal and certain categories of people who are authorised to appear should be authorised to appear before the Appellate Tribunal of the Customs and Excise Revenues. Otherwise we will be debarring

[Shri Rameshwar Thakur]

a number of other practitioners including Chartered Accountants who are entitled to practice and also some competent lawyers cum Chartered Accountants who practice in the name of Chartered Accountants. I think this may not be fair to restrict the representation to a particular clause.

Another one is section 22 which deals with conditions as to making of interim orders. It is good that in certain cases it may be expedient and necessary in the interest of revenue that interim orders should be passed. But first it says that it will pass an interim order only after giving an opportunity to such party who will be heard in the matter. Now, the proviso says that in certain cases this right may also be taken away. This is a question to be considered as to whether we should pass an interim order or not without giving an opportunity to the assessee who may be affected. Obviously it may not be the Government side, but the assessee. So we should evolve a procedure by which at least one opportunity should be given before passing such an interim order. I would also like to know whether there will be any time-limit for passing interim orders. This question should be considered.

It is a new experiment and certain Benches are constituted in pursuance of article 323 (b) of the Constitution. Therefore, it is essential that such Constitutional authority and right be given to this important Tribunal. I hope it will succeed in its working, procedure, performance and improve its image in the eyes of the people. I also hope it will really function like a High Court and will be able to expedite the cases in the interest of revenue as weill as the assessees. I think that confidence can be gained only when it performs independently and with a status like a High Court and with special powers to dispose of cases.

With these words, I support this Bill and the other two Bills which have been brought forward by the hon. Minister for Finance. Thank you.

THE DEPUTY CHAIRMAN: Shri Kailash Pati Mishra.

श्री कैलाश पति मिश्र (बिहार) : उपसभापति महोदया, अभी एक भाषण विरोधी बेंच से हुआ और दूसरा भाषण सत्ताधारी पक्ष से हुआ, इन्हीं दो भाषणों को जोड़कर अगर कुछ निष्कर्ष निकला जाये और उस पर आदरणीय पुजारी जी विचार करें तो शायद वही सहमत हो जायें कि यह बिल बडी जल्दबाजी में लाया गया है । इतने महत्वपूर्ण विधेयक पर जितनी गम्भीरता से ध्यान देकर इसको लाना चाहिए था उस गम्भीरता से यह नहीं लाया गया है । तर्क दिया जा रहा कि संविधान की धारा 323 बी के आधार पर यह विधेयक लाया गया है । धारा 323–बी आपको ट्रिब्यूनल बनाने का अधिकार तो देता है लेकिन यह अधिकार नहीं देती है कि आप हाइकोर्ट के अतिक्रमण करके ऊपर उसको भी लांघ कर चले जायें । मैं संविधान की धारा को थोड़ा सा कोट करना चाहता हूं । जैसे संविधान की में धारा 323-बी है वैसे ही उसी संविधान में आर्टिकल 227 पर लिखा हुआ है :

Power of superintendence over all courts by the High Court.

The High Court shall have superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction.

अब समझ में नहीं आता कि इस विधेयक को बनाते समय विधि विभाग से, ला डिपार्टमेंट से इसकी जांच हुई है या नहीं हुई और मुझे सदेह है कि इस विधेयक के विरोध में अगर सुप्रीम कोर्ट में चला गया, तो यह मौलिक अधिकार के ऊपर हमला होगा और यह विधेयक समाप्त हो जाएगा ।

महोदया, विधेयक में यह बताया गया है कि देश की आय का 80 प्रतिशत कस्टम्स और एक्साईज से आय होती है

मुकदमें लिटिगेशन के बहुत ज्यादा खड़े हो गए हैं और इसलिए यह विधेयक लाना आवश्यक बताया गया है ।

कभी-कभी तो ऐसा लगता है कि आदरणीय पुजारी जी चलने में जितनी तेज चलते हैं, उसी प्रकार से विधेयक नियम नोटिफिकेशन में भी उतनी ही तेजी लाई जा रही है ।

महोदया, एक साल के अंदर केवल 365 दिन होते हैं । केवल एक साल के अंदर एक्साईज डिपार्टमेंट में 450 नोटिफिकेशन जारी किये गये हैं और कस्टम्स में 460 । इनमें से बजट पास होने के बाद अर्थात् 1 अप्रैल, से लेकर अब तक एक्साइज में 265 और कस्टम्स में 270। अब अगर हर दिन में दो-दो, तीन-तीन नोटिफिकेशन निकलेंगे, तो फिर सरकारी पदाधिकारी जो इस रेवेन्यू से डील करने वाले नागरिक संबंधित एक-एक नोटिफिकेशन का कब और कितना अर्थ लगायेगा और उस नोटिफिकेशन के ऊपर कितना तब पत्र-व्यवहार बढ़ेगा, अगर लिटिगेशन पढ़ेगा नहीं, तो और क्या होगा ?

श्री अटल बिहारी वाजपेयी : आज भी नोटिफिकेशन आ रहा है ।

श्री कैलाश पति मिश्र : इतना बड़ा देश ; इतना बड़ा आर्थिक ढांचा, इस प्रकार से जल्दबाजी में हड़बड़ाहट में आगे नहीं बढ़ना चाहिए कि पूरा तंत्र को ऐसे लड़खड़ा कर और गोल-मटोल होकर सब का एक ऐसा जम्बल बन जाए जिसमें कोई नियम नहीं लग सके ।

मुझे यह देखकर आश्चर्य लग रहा है कि आपने एपीलेट ट्रिब्यूनल बनाने की बात को । आखिर यह ट्रिब्यूनल क्या है ? यह एक न्यायालय है, नैसर्गिक न्याय देश में किसी को भी मिलना चाहिए, नेचुरल जस्टिस किसी को भी मिलना चाहिए । आपका यह एपीलेट ट्रिब्यूनल किसके अधीन काम करने वाला है ?

महोदया, देश के अन्दर एड़ी से लेकर चोटी तक जितने भी न्यायालय हैं, चाहे मुनसिफ मैजिस्ट्रेट का कोर्ट हो, एक मैजिस्ट्रेट का कोर्ट हो, एक जिला जज का कोर्ट हो, हाई कोर्ट का कोर्ट हो, या स्वयं सुप्रीम कोर्ट हो, यह किसके अधीन काम करता है ? यह ला डिपार्टमेंट के अंदर काम करता है ।

अब यह एपीलेट ट्रिब्यूनल किसके अंदर काम करने वाला है, ला डिपार्टमेंट के अन्दर या फाइनेंस डिपार्टमेंट के अंदर ? अगर आप इसे ला डिपार्टमेंट के अंदर कार्य करने देते हैं, तो पहली शंका तो वहीं खड़ी हो जाती है कि यह नैसर्गिक न्याय दिलाने वाला एक ट्रिब्यूनल नहीं है, आर्थिक ढांचे के ऊपर तानाशाह का पंजा, तानाशाही शिकंजा करने का यह एक प्रयास दिखाई दे रहा है ।

महोदया, जो सरकारी बच्चा आजकल पैदा होता है, उसका स्वरूप और उसका आकार मुझे बड़ा विचित्र दिखाई देता है । इसी विधेयक के अंदर जो फाइनेंशल मैमोरेंडम बना हुआ है, प्रेजीडेंट–एक, मैम्बर्ज –पांच, रजिस्ट्रार–एक, असिसटेंट रजिस्ट्रार–दो, टेक्नीकल आफिसर–तीन, डी० ओ० एस०–तीन, यू० डी० सी० –सोलह । ऐसे करते-करते 22 प्रकार के पदाधिकारियों की श्रेणी उसके अन्तर्गत है और कुल मिला कर एक वर्ष के अंदर जो उस पर व्यय की कल्पना की गई है, वह तीस लाख की गई है । मुझे लगता है कि जिस समय कल्पना की गई होगी यह 30 लाख की जिसके अन्दर टेबल, कुर्सी, फन सब हैं शायद इसकी कल्पना नहीं की गई है कि देश के अन्दर हर चीज की कीमत प्रति दिन किस रफ्तार से भागती चली जा रही है । दस और इसके खर्च जुड़ेंगे । इतना खर्च करके आपने किया क्या ? जहां कहीं का भुक्तभोगी होगा और जिसे न्यायालय में जाने की आवश्यकता होगी वह इतने बड़े देश के कोने-कोने से दौड़ करके दिल्ली पहुंचेगा । दिल्ली के अलावा कहीं दूसरा दिखाई नहीं दे रहा है, क्यों कर है ऐसा ? आखिर इस देश के अन्दर इतने हाई कोर्ट हैं । हाई कोर्ट के बैंच जल्दी करने के लिए वही एक और जज बहाल करके और जज के अन्तर यह

[श्री कैलाश पति मिश्र]

अधिकार समाप्त करके कि केवल यही यह काम करे, यह कर सकते थे? उस पर कितना खर्च लगने वाला था। दिल्ली में एपीलेट ट्रिब्यूनल खड़ा करने के ऊपर आप जितना खर्च कर रहे हैं देश के अन्दर जितने हाई कोर्ट और हाई कोर्ट बैंचेज हैं हर स्तर के ऊपर वहां एक जज इस काम के लिए नियुक्त करते तो मैं समझता हूं कि मुकदमों के निपटारे में भी जल्दबाजी होती, नैसर्गिक न्याय मिलता, किसी के मन में किसी प्रकार का असंतोष नहीं रहता और आय में भी वृद्धि होती महोदया, आप बार-बार घड़ी की ओर देख रही हैं और मुझे घबराहट हो रही है।

उपसभापति: मैंने घड़ी की ओर नहीं देखा।

श्री कैलाशपति मिश्र: आपने एक एपीलेट ट्रिब्यूनल की बहाली में जो श्रेणी तय की है वह किसकी श्रेणी तय की है। प्रेसीडेंट एक जज होगा, दोनों लगा दिया कार्यरत भी और अवकाश प्राप्त भी। इसका सीधा अर्थ है और इधर से दोनों तरफ जो माननीय सदस्यों ने अपनी शंका प्रकट की है उसमें से एक ही चीज निकलने वाली है, अवकाश प्राप्त जज की आप बहाली करेंगे। फिर उसके बाद आपने टैक्नीकल मैम्बर्ज की चर्चा की है। टैक्नीकल मैम्बर्ज में आदरणीय पुजारी जी यह आपसे कहा है कि कस्टम एंड एक्साइज सर्विस में 30 साल का जिसने अनुभव प्राप्त किया है ग्रेड ए उसको आप नियुक्त कर रहे हैं। आप जरा हिसाब लगा कर बता सकते हैं कि जब से आपने इस ट्रिब्यूनल को कार्य करने का अधिकार देने का तय किया है कस्टम एंड एक्साइज सर्विस में से ग्रेड ए के आपको कितने पदाधिकारी प्राप्त होने वाले हैं? यह विभाग कब बना था? यह विभाग 1959 में बना था? 1959 से अगर आप 30 साल जोड़िए तो जरा हिसाब लगाइये कि दो साल तक आपको एक भी पदाधिकारी इसके लिए मिलने वाला नहीं है। 1989 तक चला जाएगा, रिटायर जज रिटायर्ड पदाधिकारी और जो इस प्रकार से रिटायर्ड होता है मुआफ करिए वह न्याय नहीं देते हैं सरकार की ओर देखते रहते हैं कि सरकार क्या चाहता है। उसकी इच्छा की पूर्ति करना यही अवकाश प्राप्त इस प्रकार के पदाधिकारियों का काम रहता है। इसमें नैसर्गिक न्याय कहां से मिलेगा? मुझे लगता है कि अनेक ऐसे घपलों की बातें इसमें भरी हुई हैं। वैसे तो विधेयक का एक-एक आर्टीकल अगर पढ़ना शुरू किया जाए तो एक क्लाज भी ऐसा दिखाई नहीं देता है कि जिस पर विवाद नहीं खड़ा हो जाए और कंट्रोवर्सी नहीं खड़ी हो जाए और इसमें संशोधन करने की आवश्यकता है। आप इतनी जल्दबाजी क्यों करना चाहते हैं? कहा गया है वित्त मंत्री ने आगामी बजट के लिए कल्पना का उसके एक आकार का स्वरूप सामने रख दिया है। उसका इससे संबंध नहीं है। नोटीफिकेशनों को सोच समझकर लाइये, नियम सोच-समझ कर घोषणा करिए और ऐसी स्थिति मत पैदा करिए कि सवेरे आपने एक नोटीफिकेशन पैदा कर दिया तो दोपहर आते आते लगा कि यह अधूरा है और एक दूसरा पैदा करने की आवश्यकता है और शाम होते होते यह लगे कि एक तीसरा नोटीफिकेशन आपको और करना है। इससे आर्थिक ढांचे में ऐसी अस्त-व्यस्तता निर्मित हो जाएगी कि इसको संभालना आपके लिए मुश्किल हो जाएगा। दो जो और बिल आप लाए हैं, मुझे लगता है कि उसमें भी आपने गंभीरता से विचार नहीं किया है। हम आखिर दुनियां में दूसरों के कंपटीशन से चल रहे हैं, खासकर के पड़ौसी देश पाकिस्तान और बंगलादेश से आर्थिक क्षेत्र में भी हमारा कंपटीशन आखिर हो रहा है। इण्टरनेशनल मार्केट में हमारे रुपए की कीमत बांगलादेश के रुपए की कीमत, पाकिस्तान के रुपए की कीमत और चीजों की कीमत आज यह टैक्स बढ़ाने के बाद भी देश के बाहर कितना अपना स्थान बना सकेगी, इस पर विचार करना आवश्यक है। केवल कस्टम ड्यूटी बढ़ा दी या एक्सपोर्ट ड्यूटी बढ़ा दी, यह मत भूलिये कि इससे जेब में अधिक पैसा नहीं आता है। अगर कोई गाय है और जब सबरे

शाम दूध निकालने बैठते हैं तो सवेरे पांच किलो दूध देता है, शाम को पांच किलो दूध देता है, लेकिन अगर दिन भर दस बार उस गाय को दुहने लगें तो वह गाय नहीं रहेगा, बकरा बन जायेगा। इसलिए अन्तर्राष्ट्रीय बाजार की प्रतियोगिता में वहां टिके रहने का आपको विचार करना है और तब टैक्सों का बढ़ौतरी का आवश्यकता है, वह इसलिए नहीं कि आप रात-दिन घाटे में चलते चले जा रहे हैं, डेफिसिट फायनेंसिंग का गेप आपका बढ़ता चला जा रहा है। उस दिन भी मैंने कहा था कि आठ महीने केवल देखिए और आठ महीने के अंदर भारत सरकार साढ़े सात हजार करोड़ रुपए के डेफिसिट फायनेंस में आकर खड़ा होगा। यह स्थिति क्या हो रही है? लग रहा है कि यह सरकार क्षणभंगुरता की ओर तेजी से जा रही है? एक-एक कदम और कदम जो इतने बड़े देश का कदम हो, आर्थिक स्थायित्व लाने वाला कदम हो। लेकिन आज इसका पूरा अभाव दिखाई दे रहा है।

इसलिए मैं आग्रह करना चाहता हूं कि जल्दबाजी में इस विधेयक को पास मत कीजिए और लगे तो इसे सेलेक्ट कमेटी में भेजने की चेष्टा कीजिए। होने दीजिए इस पर चर्चा, इस पर पूरी तरह से चर्चा होने दीजिए और तब इस पर आप सदन में विचार करने के लिए, पारित करने के लिये या हटाने के लिये, जो उपयुक्त हो, उसके लिए अवसर खड़ा कीजिए। लेकिन जल्दबाजी में इसको पास करने की कोशिश मत कीजिए।

इतना ही कहकर मैं अपनी बात समाप्त कर रहा हूं।
धन्यवाद।

STATEMENT BY MINISTER

Re. Situation in Karnataka Arising out of Protest against Publication of a Short Story in an English paper "Deccan Herald"

THE MINISTER OF HOME AFFAIRS (SHRI BUTA SINGH): Madam Deputy Chairman the House is aware of the recent violence in Bangalore and some parts of Karnataka as a result of protest against publication of a short story in the Deccan Herald Weekly supplement of December 7. In the consequent rioting and violence police had to open fire in Bangalore as well as in Mysore. According to information 11 persons were killed in Bangalore and in Mysore as a result of police firing. The Central Government is in constant touch with the State Government and has asked for fuller and complete details in the matter. The State Government has already initiated some administrative action. A judicial inquiry into the incidents has also been ordered. It is learnt that the Editor and the Publisher of the newspaper have been arrested under section 153 A I.P.C. and cases registered against them. Measures for relief are also reported to be in hand. Details from the State Government in this regard are awaited.

It is a matter of deep regret that a careless and provocative story should have been published in a newspaper without regard to the feelings of our Muslim brethren. Several precious lives have been lost in the Bangalore and Mysore. I have spoken to the Chief Minister of Karnataka and also to the Governor. Both of them have assured me that all steps are being taken to restore law and order and bring about normalcy. My colleague Minister of State for Home Affairs has also been in constant touch with the State authorities. The Central Government has offered all assistance that the State Government may require.

We have requested the Chief Minister to ensure that such provocative publications do not recur and he has assured us that steps will be taken in this behalf. We have impressed upon the State Government to maintain law and order to see that the situation is not exploited by anti-social elements.